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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,567	08/07/2001	Pierre Germain	1537.00001	3091
29855	7590	03/30/2004	EXAMINER	
WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, P.C. 20333 SH 249 SUITE 600 HOUSTON, TX 77070			HUYNH, BA	
			ART UNIT	PAPER NUMBER
			2173	
DATE MAILED: 03/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/923,567	GERMAIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ba Huynh	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                          2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 and 19-21 is/are rejected.
- 7) Claim(s) 17,18,22 and 23 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 August 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 6, 7-8, 11-12, 14, 19 are rejected under 35 U.S.C. 102(e) as being anticipated by US patent #6,691,256 (Cook et al).

- As for claims 1, 7: Cook et al teach a computer implemented system and corresponding method for visually representing performance and flow analysis of a communication network having device connected by links (figure 1), comprising the means/steps of:
  - a first memory for storing a graphical representation of the communication network and showing the devices connected by links (3:16-37; 4:43-49);
  - second memory for storing data representing performance and flows in the communication network (3:39-51);
  - a display 18;
  - a processing system 19 operatively connected to the first and second memory and to the display, the processing system selectively mapping the data on the graphical representation of the communication network by varying visual characteristics of the

relevant device or devices for viewing on the display (3:65 – 4:49). It appears that the varying visual appearance of both devices and links is inherently included in Cook's teaching of varying appearance of "relevant part of a network, device or devices" of the network (3: 28-38; 4:43-49).

- As for claims 2, 3, 8: Per Cook, the second memory comprises a database of metric values (3:39-51). A network supervisor's interrogates and analyzes the network to generate metric values at any select time (3:8-28). The system includes a data collection system for collecting data from the devices and the links at the select times to build the database (3:18-28, 39-51).
- As for claims 14, 19: Cook et al teach a computer implemented system and corresponding method for visually representing performance and flow analysis of a communication network having device connected by links (figure 1), comprising the means/steps of:
  - a first memory for storing a graphical representation of the communication network and showing the devices connected by links (3:29-37; 4:44-49);
  - second memory for storing data representing performance and flows in the communication network (3:39-51);
  - a third memory for storing symbols representing different devices and links (3:17-27; 4:34-36)
  - a processing system 19 operatively connected to the first and second memory and to the display, the processing system selectively mapping the data on the graphical representation of the communication network by varying visual characteristics of the

relevant device or devices for viewing on the display (3:65 – 4:49). It appears that the varying visual appearance of both devices and links is inherently included in Cook's teaching of varying appearance of "relevant part of a network, device or devices" of the network (3: 28-38; 4:43-49).

- As for claims 6, 11, 12: The data comprises metric of a plurality of performance and flow characteristics (1:61 – 2:7; 3:39-51). The system maps select one of the metrics responsive to selection of a desired view of the communication network (1:43-49; 2:50-54).

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-5, 9-10, 13, 15-16, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent #6,691,256 (Cook et al.)

- As for claims 4, 5, 9, 10, 13, 15, 16, 20, 21: Cook teaches changing visual appearance of the affected devices and links of the networks and provides a stress bar (a scale which has minimum and maximum values) for indicating the level of flow and performance (4:44-61). Cook fails to clearly teach varying the size or color of the affected devices and links to indicate the level of flow and performance.

However in an analogous art of network management, Horii teaches the varying of the size or color of the affected devices and links to indicate the responsive to the content of the abnormal state (9:32-34; 7:56 - 8: 7; 9:54-67). It would have been obvious to one of skill in the art, at the time the invention was made, to combine Horii's teaching of varying the appearances of the devices and links in accordance with the level of abnormal to supplement Cook's teaching of highlighting and stress bar. Motivation of the combining is for providing a visual indication of level of flow and performance directly on the affected devices and links, without having the cost of providing the separate stress bar.

***Allowable Subject Matter***

5. Claims 17-18 and 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: The prior art record fail to clearly teach or suggest the metrics oriented link arrow with varying the thickness and contact point of the arrow responsive to performance and flow in the communication network (claims 17, 22). The prior art record further fail to clearly teach or suggest that each of the edges comprises layered lines with each layer representing a different metric.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (703) 305-9794. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (703) 308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ba Huynh  
Primary Examiner  
AU 2173  
3/21/04

BA HUYNH  
PRIMARY EXAMINER